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February 23, 2010

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D. C. 20423

ENTERED  
Office of Proceedings  
FEB 24 2010  
Part of  
Public Record

re: STB Finance Docket No. 35087,  
Canadian National Railway Company and Grand Trunk  
Corporation—Control—EJ&E West Company

Dear Ms. Brown:

Attached for filing in the subject proceeding are the Comments Seeking  
Clarification of the Illinois Department of Transportation.

If you have any question concerning this filing or if I otherwise can be of  
assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

cc: Ms. Phillis Johnson-Ball

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB Finance Docket No. 35087**

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK  
CORPORATION—CONTROL—EJ&E WEST COMPANY**

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**COMMENTS SEEKING CLARIFICATION  
OF  
ILLINOIS DEPARTMENT OF TRANSPORTATION**

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**Attorneys for**

**ILLINOIS DEPARTMENT OF TRANSPORTATION**

**Dated: February 23, 2010**

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB Finance Docket No. 35087**

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK  
CORPORATION—CONTROL—EJ&E WEST COMPANY**

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**COMMENTS SEEKING CLARIFICATION  
OF  
ILLINOIS DEPARTMENT OF TRANSPORTATION**

*In response to the Board's announcement of January 20, 2010, inviting comments concerning the compliance by the Canadian National Railway ("CN") with the numerous environmental conditions imposed in Decision No. 16, 2008 ("Approval Decision"), the Illinois Department of Transportation ("IDOT") states, as follows.*

1. The Approval Decision requires two grade separations: one at Ogden Avenue in Aurora, IL (hereinafter referred to as "Ogden Avenue"), and the other at Lincoln Highway in Lynwood, IL (hereinafter referred to as "Lincoln Highway").

2. IDOT was designated by the Board to be the lead agency for the development of these grade separations, and, while the Approval Decision required CN to pay 67% of the cost of the grade separation at Ogden Avenue and 78.5% of the Lincoln Highway separation costs, CN will be automatically released from the mandated financial responsibility if IDOT does not complete the preliminary engineering, environmental analysis, final design, right-of-way acquisition, utility relocation and letting of the construction contracts and begin the construction of the two projects no later than the end of the year 2015.

3. CN and some of the affected communities petitioned for judicial review of the Approval Decision, and the consolidated cases, No. 09-1002, Village of Barrington, Illinois v. Surface Transportation Board, are pending before the United States Court of Appeals for the District of Columbia Circuit. These proceedings before the Court of Appeals have been stayed for one reason or another, and an order setting the briefing schedule was entered only just recently on January 14, 2010.

4. In view of the judicial review proceedings and the uncertainty of their length, IDOT on September 21, 2009, filed its Petition to Reopen, asking the Board to allow it seven years from the date of the final unappealable court order to commence construction of the grade separations. CN, on October 13, 2009, filed its Reply, opposing the relief sought by IDOT. The Board by its Decision, served October 23, 2009, denied IDOT's Petition to Reopen, deeming it premature. The Board said, "[I]f reasonable progress has been made, yet it becomes clear that construction is not likely to be initiated by 2015 due to circumstances beyond IDOT's control, such as a long appeals process, the Board will entertain requests to extend the time deadlines in Condition No. 14 at that time."

5. IDOT convened an initial coordinating meeting regarding the Ogden Avenue and Lincoln Highway grade separation projects on January 28, 2010; the meeting was attended by representatives of CN, IDOT and the two consulting firms hired by IDOT to prepare the plans for the projects. At that initial coordinating meeting, CN made demands related to the construction of the two grade separation projects which, in IDOT's view, are beyond the scope of Condition No. 14 and would have the effect of impeding IDOT's ability to complete the work requirements imposed by the Board and to

commence construction of the grade separations at Ogden Avenue and Lincoln Highway before the end of the year 2015.

6. At the meeting, CN insisted that, if the grade separations were accomplished by way of bridges carrying Ogden Avenue and Lincoln Highway over the CN line, the structures would need to span the full width of CN's 100-foot right of way and provide for no less than a 23-foot vertical clearance. Although there currently is only a single track at both at-grade crossings, CN was adamant that provision be made in the planning, design and construction of the overpasses for additional tracks extending to the railroad's property line. Providing for the spacing of tracks based on the Illinois Commerce Commission specified minimum of 15 feet, the overpasses, with the widths suggested by CN, would allow CN to lay and maintain six parallel tracks, each of which could accommodate a trainload of double stacked containers.

7. In IDOT's opinion, bridges having a span of the full 100-foot right-of-way, with a minimum clearance of 23 feet across the entire right-of-way, are not required. IDOT's Senior Railroad Engineer, Mr. Andy E. Rabadi, who attended the meeting with other representatives of IDOT's staff, was unaware of any bridge in the entire State of Illinois designed to span the railroad's right-of-way with no piers. He asked CN's representatives at the meeting to cite an example of where such a bridge, crossing the full width of the railroad's right-of-way, ever was built. They were able to come up with only one location, and it was in Indiana.

8. IDOT does not believe that Condition No. 14 contemplated that, if the grade separations at Ogden Avenue and Lincoln Highway were accomplished by way of overpasses or underpasses, that the bridges would be the grandiose structures envisioned

by CN. In compliance with the Board's direction, IDOT is prepared to plan, design and construct grade separated structures, which would permit CN to install a second track, that is, bridges having widths of no less than 30 feet, with clearances of no less than 23 feet. IDOT, by this filing, seeks clarification from the Board that its understanding is correct and that it can proceed accordingly.

9. A second impeding condition, which CN insisted upon at the above described initial coordination meeting, was that, if the grade separations of Ogden Avenue and Lincoln Highway were accomplished by way of overpasses or underpasses, the front faces of the bridge abutment walls be located beyond CN's property line. CN's demand that the abutments of the structures be located off of its right-of-way would mean that the owner of the bridges would be IDOT, and IDOT would be responsible for all future inspections, maintenance and repairs of the entire structures

10. CN's demand regarding the placement of the bridge abutment walls ignores completely that the need for these grade separations was the increased traffic on the existing track resulting from CN's acquisition of the EJ&E and the greater number of trains which would be operated by CN through Aurora and Lincoln. As IDOT understands the Approval Decision, the grade separations were necessitated by the increased train traffic resulting from CN's acquisition of the EJ&E and were intended to eliminate the effects of increased "project related" train traffic on vehicle queue lengths, reduce delays at blocked crossings and mitigate the safety concerns occasioned by the greater train-vehicle exposure.

11. IDOT believes that Condition No. 14 contemplated that, if the grade separations at Ogden Avenue and Lincoln Highway were accomplished by way of

overpasses or underpasses, the bridges would need to be owned and maintained by CN which, after all, necessitated their construction in the first place by its acquisition of the EJ&E and the choices associated with that acquisition. IDOT, by this filing, seeks clarification from the Board that it is correct in its understanding about CN's ownership of the bridges and that it can go forward with the design of the projects accordingly.

12. CN has raised yet another matter which will potentially impede the planning, design and construction of the Ogden Avenue and Lincoln Highway grade separation structures. IDOT, in building its railway bridges, follows the Standards of AREMA, the American Railway Engineering and Maintenance of Way Association, which are the standards of the nation's system of railroad lines, in addition to the IDOT, Federal Highway Administration and Illinois Commerce Commission policies, procedures, standards and guidelines. CN, however, has its own 2006 Guidelines for Design of Railway Structures, and it is demanding that its requirements, in addition to those of the industry, be followed in the building of the grade separation structures. Although it disagrees with CN's view, IDOT will maintain flexibility and will seek to accommodate CN by incorporating the railroad's design criteria as much as possible and practicable. If, however, the design of these grade separations reaches a point where there is a major disagreement between IDOT and CN about the standards to be followed, IDOT submits that the AREMA, Federal and State standards,, policies, procedures and guidelines shall govern and that CN shall not be allowed to place an obstacle in the way of progress on these projects by attempting to impose its own design guidelines.

13. IDOT believes that Condition No. 14 anticipated that, if the grade separations at Ogden Avenue and Lincoln Highway were accomplished by way of overpasses or

underpasses, the bridges should be designed in accordance with AREMA, Federal and State standards, policies, procedures and guidelines, incorporating as many of the standards of CN's 2006 Guidelines for Design of Railway Structures as in the sole and exclusive judgment of IDOT, are deemed possible and practicable. IDOT, by this filing, requests clarification from the Board that it has correctly read the Board's requirement and can go ahead consistently therewith.

WHEREFORE, the Illinois Department of Transportation asks that its comments be entertained and the clarification it seeks herein from the Board be granted.

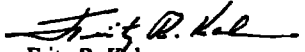
Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

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